PATENT APPLICATION
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LeA 36,032

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION OF	
OLAF GEBAUER ET AL	ART UNIT: 1609
SERIAL NUMBER: 10/511,821	EXAMINER: J. H. MURRAY
FILED: MAY 11, 2005	CONFIRMATION NO.: 8845
TITLE: TRIAZOLOPYRIMIDINES	

Communication

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Communication is in response to the Office Action dated May 7, 2007. A petition for extension of time and fee by way of authorization to charge Deposit Account No. 50-2510 accompanies this Amendment, bringing a response to be due on or before August 7, 2007.

FIRST CLASS MAIL Date of Deposit: July 26, 2007
I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class mail in an envelope address to: Commissioner of Patents, P.O. Box 1450, Alexandria VA 22313-1450.

Pam Ramsey

The Office Action requires restriction into one of Groups I, II or III as set forth in the Office Action, and requires (in its Paragraph 4), an election of a single species selecting specific variables for X, Y and R in the formula (I) in the ring system.

The Office Action essentially argues that there is no common core associated with the compounds and compositions of Groups I-III to define a single general inventive concept.

Applicants respectfully traverse the restriction requirement and respectfully asserts that these claims should be examined in this single application.

Applicants note at the outset that this case is proceeding under 35 U.S.C. Section 371, and not 35 U.S.C. Section 111(a), and that therefore the proper analysis is not U.S. Patent Office restriction practice, but is rather the unity of invention standard provided under the Patent Cooperation Treaty regulations, as noted in the Manual of Patent Examining Procedure at Section 1893.03(d).

37 C.F.R. Section 1.499 provides that if an Examiner finds that a national stage lacks unity of invention as set forth in 37 C.F.R. 1.475, the Examiner may require restriction. 37 C.F.R. Section 1.499 also provides that review of any such requirement is provided under 37 C.F.R. Section 1.143 (request for reconsideration) and 1.144 (petition to the Commissioner, noting that a petition will not be considered if reconsideration of the requirement was not requested). Therefore, pursuant to 37 C.F.R. Section 1.143, Applicants hereby request reconsideration of the requirement for restriction.

37 C.F.R. Section 1.475 and MPEP Section 1893.03(d) provide that a group of inventions is considered linked to form a single general inventive concept where there is a technical relationship among the inventions that involves at least one corresponding special technical feature. 37 C.F.R. Section 1.475 provides, and MPEP Section 1890.03(d) repeats, that the expression "special technical feature" is defined as "meaning those technical features that define the contribution which each claimed invention, considered as a whole, makes over the prior art."

Further, Annex B Part 2 of the PCT Administrative Instructions, as amended July 1, 1992 in Section 206 (appended at AI to the MPEP and cited in MPEP Section

1893.03(d)) provides:

> "The determination by the International Searching Authority, the International Preliminary Examining Authority, **and the designated and elected Offices**, whether an international application complies with the requirement of unity of invention under Rule 13 shall be made in accordance with Annex B."

Emphasis added.

Annex B Part 2 of the PCT Administrative Instructions provides 30 examples concerning unity of invention, with Examples 18-24 providing examples specifically directed to Markush practice. In Example 18, an indolyl moiety provides the significant structural element shared by all alternatives and since all the claimed compounds in Example 18 were alleged to possess the same utility (namely as a pharmaceutical for the purpose of enhancing the capacity of the blood to absorb oxygen) – unity was deemed to be present. Example 20 provides an example of a six-atom **heterocyclic** compound where the compound could include as element "Z" in its six atom ring "oxygen or sulfur" – where unity of invention was deemed to be present.

In the present case, the Examiner states that the core structure of the current application is a substituted triazolopyrimidine being commonly known and therefore lacks a special technical feature. He refers to U.S. Patent No. 5,811,547 where the active ingredient "Trapidil" is described. It is correct that trapidil is also a trizolopyrimidine, but in the present application, additional special technical features are described which define the present invention over the state of the art as follows.

In the 5-position of the rign system Trapidil possesses a methyl a methyl group. In the present application, the corresponding substituent X can only be a halogen atom.

At the position 7 at the ring stem Trapidil shows a diethylamino moiety. In the present application, the corresponding substitutent G is a mono- or polycyclic saturated, unsaturated or aromatic heterocyclyl group.

These features of the present invention define a core structure of compounds being claimed in the present invention, and build a single inventive concept.

From the foregoing it is clear that Claims 7 to 11 are linked together by this single inventive concept. Claim 7 describes the compounds being claimed, Claim 8 claims the process by which these special triazolopyrimidines are obtained using an analogous chemical synthesis procedure, while Claim 9 describes the compositions comprising one or more triazolpyrimidines being disclosed by the invention. In addition, Claim 10 describes the method for controlling unwanted microorganisms applying an effective amount of the claimed triazolopyrmidines and Claim 11 claims the process for preparing the microbicidal compositions comprising one or more triazolopyrmidines.

Applicants respectfully remind the Examiner of the case of *Caterpillar vs. Commissioner of Patents*, 231 U.S.P.Q. 590 (E.D. Va. 1986) which brought the Patent Office to task when the PTO's interpretation of 37 C.F.R. Section 1.141(b)(2) as applied to unity of invention determinations in international applications, as the PTO's interpretation was **not** in accordance with the Patent Cooperation Treaty. In particular, acting as the International Searching Authority, the PTO in the *Caterpiller* case found a lack of unity where unity in fact existed. The court reminded the PTO that when the Office considers international applications as an International Searching Authority, as an International Preliminary Examining Authority and/or during the national stage as a Designated or Elected Office under 35 U.S.C. Section 371, PCT Rules 13.1 and 13.2 are to be followed when considering unity of invention of claims of different categories without regard to practice in national applications filed under 35 U.S.C. Section 111.

Applicants note that the present invention is the national stage of a PCT application. As such, Applicants are entitled to claims to a compound, to a method of making the compound and a method of using the compound in a single application. See Administrative Instructions under the PCT, Annex B, Unity of Invention, Part 1 (e) Combinations of Different Categories of Claims, (i).

In direct response to the restriction requirement, Applicants, with the above

traverse, hereby elect the claims of Group I as defined by the Office Action which is the compound or microbicidal composition of formula (I) according to Claims 7 and 9. As the election of species required by Paragraph 4 of the Office Action, Applicants elect the species where:

X is Cl,

G is tetrahydropyridazin-1-yl, and

R is 2,6-difluoro-4-trifluoromethylphenyl.

Withdrawal of the restriction requirement and review of all claims in this single application are respectfully requested.

Respectfully submitted,

By _____

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